EFFECT OF REORGANIZATION ON CORPORATE LIABILITIES. — Where, pursuant to legislative authority, corporation A buys the property of corporation B and contracts to assume the liabilities of the latter company, does this give to the plaintiff a right of action directly against the buyer for an injury to the plaintiff's property committed by the seller before the sale? The extent of the responsibility of one corporation upon taking over the assets and franchise of another corporation for the previously incurred liabilities of the latter depends very much on the nature of the transaction. An out and out sale of the assets of a corporation to a *bona fide* purchaser for value, — a sale upon the foreclosure of a mortgage is the typical example, — if not in its nature forbidden by law, and if there is no valid existing lien, serves to pass a clear title to the purchaser free from all responsibility for the previous undertakings and misdoings of the vendor. *Hoard* v. *Chesapeake & Ohio Ry.*, 123 U. S. 222; *Bruffett* v. *Great Western R. R. Co.*, 25 Ill. 353. On the other hand, where merely formal changes occur, — as where a *de facto* corporation procures a new charter in order to become a *de jure* corporation, or a state bank is newly chartered as a national bank, — the new company is considered as a continuation of the former one, and is thus responsible for all its liabilities. *Benesh* v. *Mill Owners' Mutual Fire Insurance Co.*, 103 Iowa, 465; *Metropolitan National Bank* v. *Claggett*, 141 U. S. 520. Again, if the new corporation is formed with an intention to defraud the creditors of the old one, the transfer being either without consideration, or, if for value, so arranged as to give the old stockholders a claim upon the purchase money in advance of the creditors, it is clear that the new company is to be considered as a constructive trustee for the benefit of those with old claims. *Central of Georgia Ry. Co.* v. *Paul*, 93 Fed. Rep. 878 (C. C. A. 5th Cir.); *Santa Fé Electric Co.* v. *Hitchcock*, 9 New Mex. 156. So, too, where by authority of law two or more corporations consolidate. The new organization, it is said, has taken the benefit, and must therefore bear the burden. Hence one with a claim in contract or tort against any of the assimilated companies may have his claim satisfied from the assets of the aggregation, although the procedure may vary according to local statutory provisions. In some states such a liability must be expressly provided for in the statute authorizing the merger, while in others it is held to be implied from the very nature of the consolidation. *Louisville, etc. Ry. Co.* v. *Boney*, 117 Ind. 501. See *Prouty* v. *Michigan Southern Ry. Co.*, 52 N. Y. 363. Similarly where the statutes governing the sale by a corporation of its assets to another corporation — and in general such a proceeding requires the sanction of legislative authority — provide that the purchasing corporation be responsible for the obligations of the seller, it follows that liability will attach so as to give a plaintiff a direct right of action against the purchaser. *New Bedford R. R.* v. *Old Colony R. R.*, 120 Mass. 397; *St. Louis, etc. R. R. Co.* v. *Miller*, 43 Ill. 199. If upon a simple sale, moreover, one with a claim against the vendor should agree to look to the purchaser for satisfaction, the purchaser promising in return to pay such claimant, the latter would seem to have a right of action directly against the promisor on the principle of novation. And there may be a novation as to a tort liability as well as upon a contract. *Reed* v. *Nash*, 1 Wils. 305. But where this promise to assume liability is made, not to the plaintiff, but to the vendor corporation, a different question arises.

The Court of Appeals of the District of Columbia has recently passed

upon this precise point. One of the covenants in a deed of sale of the corporate property of a street railway company was that the purchaser corporation would assume and discharge all the obligations and liabilities of the seller. Relying upon this agreement, the plaintiff sued the buyer for a tort committed by the seller when in possession of the premises. The court held that this agreement could not give a right of action to one not a party to such agreement. *Capital Traction Co.* v. *Offutt*, 29 Washington Law Reports, 18 (Jan. 10). Had the plaintiff sued in a jurisdiction which adopts the rule in *Lawrence* v. *Fox* he might well have been allowed to recover. Here was a duty owing to the plaintiff from the promisee, and the contract was apparently intended to benefit the plaintiff; thus it would be within the decisions of those courts which limit the doctrine most strictly. *Durnherr* v. *Rau*, 135 N. Y. 219. That the liability owing from the promisee to the beneficiary was for a tort rather than upon a contract would seem to make no difference on principle. There was an asset in either case. Yet upon this exact point of allowing one with a claim for a tort to sue as beneficiary on a contract, according to the doctrine of *Lawrence* v. *Fox*, no direct authority has been found.

QUO WARRANTO AGAINST A COLLEGE. — While an incorporated educational institution is entitled to the same general rights and subject to the same general liabilities as are ordinary business corporations, yet from its retired and charitable nature it is less likely than are bodies of a more worldly character to exceed its powers, or, if it does so, to prove harmful to the public. For these reasons, and because of the value of such corporations to society, we find few instances in which a state has been willing to oust a college of its right to be a corporation. A late case in Ohio, however, shows that there are occasions where a college has so abused or neglected its franchise as to justify a forfeiture of its charter. *State* v. *Mt. Hope College Co.*, 58 N. E. Rep. 799. The trustees of the college had leased it to a man who was to act as president and to have sole control of its affairs. He proceeded to confer degrees, signed by the trustees and left in his hands for that purpose, upon the payment of stipulated sums, and the performance of a merely nominal amount of work, — sometimes even upon the applicant's promise to do the work in the future. No attendance was required, and no examinations held. The court ousted the college of its right to be a corporation, refusing to limit its judgment to an ouster merely of the powers wrongfully abused.

Every corporation is limited in its action to the powers conferred in its charter, and there is, moreover, a tacit understanding that the corporation shall exercise those powers in such a manner as to accomplish the design for which it was incorporated. Angell & Ames, Corporations, 11th ed. § 774. Any act done outside its powers or in abuse or neglect of its franchise may expose the corporation to the loss of its charter at the hands of the state. But unless there is a special provision in the charter that a certain act or omission shall be a cause of forfeiture, the court before which the *quo warranto* proceedings are brought has full discretion to render such a judgment as will meet the ends of justice and best subserve the interests of the public. Accordingly, where there has been a substantial performance of conditions, or where the abuse complained of is the result of mere mistake, accident, or misfortune, a court generally